—Tr. Tr. 13,338—

**New York, August 29, 1949**

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Mr. Sacher: May I be heard on that, your Honor?

The Court: No.

Mr. Sacher: In view of the fact that Mr. McGohey—

The Court: I will not hear you.

Mr. Sacher: But Mr. McGohey was permitted to make a statement concerning this.

The Court: Mr. McGohey responded to a question from me and further asked leave to address the Court which I permitted. I do not desire to hear you.

Mr. Sacher: I have asked your Honor for leave.

The Court: Please be silent, Mr. Sacher. Again you are deliberately contemptuous.

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—Tr. Tr. 13,346—

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Mr. Isserman: I am calling specific attention to the question by the Court on page 23—

The Court: The main point up there in that editorial office is that they changed these things around before they published them. Now why don't you ask him that?

Mr. Isserman: That is not the main point. That is perhaps your Honor's testimony, but it is not the testimony of this witness. It might have been Mr. Budenz's testimony.

The Court: Well, I think you had better try to control yourself a little bit, Mr. Isserman.

Mr. Isserman: I think that is not the main point at all, your Honor.

The Court: Well, put the question in your own way but don't please make statements about my testifying, which I had no intention whatever of doing.

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—Tr. Tr. 13,425—

**New York, August 30, 1949**

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Mr. Gladstein: Your Honor permitted the witness Nicodemus to testify on this subject, I might point out, and I am willing to show your Honor the record.

The Court: I do not need any argument. Go ahead.

Mr. Gladstein: No, it is not argument. I just thought that inasmuch as you permitted Mr. Gordon to elicit that testimony from Nicodemus, the same rule, in all fairness, should apply to our witnesses, and we should be permitted to show this jury the status that this witness has had with fellow members of the union and workmen in that plant.

The Court: Mr. Gladstein, at the earliest stages of this trial before I was convinced that it had become an endurance contest I permitted a great many things that I thought were on the fringe of relevancy, and I found that I could not do that without unduly prolonging the trial. I think the question of what other offices this witness may have held in the union

is quite remote and not really important, I am willing to state, however, that if the matter had arisen some months ago I probably would have permitted it, as I could see no particular harm. But now I rule it out.

Mr. Gladstein: All I am pointing out to your Honor

—Tr. Tr. 13,426—

is that all the time that the Government witnesses were on the stand you permitted the prosecution to elicit that kind of testimony.

The Court: I understand the view which you and your colleagues have often expressed here, which is that I am partial to the prosecution; that I have been conniving with them and doing various other things, which are not so; but all I can do is merely say that you are wrong about that. I am trying to do the best I can here to administer justice, and it has seemed to me that the time was reached some weeks ago where I was absolutely required to make this series of rulings that I made. So that you need not pursue that subject further.

Mr. Gladstein: I won't, your Honor, because you have directed me. All I wanted to say is to show that your Honor applied one rule to the prosecution and a different one to us.

The Court: I say that I did no such thing. I say what happened was that in the course of the development of the trial there had been various things happening which made it necessary for me to make the rulings that I did. I do not consider that as favoring one side as against the other at all.

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—Tr. Tr. 13,481—

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Q. Who was present? A. Well, there was Mr. Schusterman, Nicodemus, Nicodemus's girl friend—Louise Trail—

Mr. McGohey: I object to the characterization, your Honor.

The Court: I don't know what I am going to do with these people, I swear. What on earth possessed you to bring that in, will you tell me?

The Witness: The question was who was there, your Honor.

The Court: Did some one of these lawyers tell you to put that in?

The Witness: No, they did not, sir.

The Court: Well, I will strike it out. This description of that woman as Nicodemus's girl friend was absolutely a gratuitous thing brought in by the witness without any occasion at all. I won't have that sort of thing.

Mr. Gladstein: But it is no occasion for your Honor to insinuate, as your Honor did, in asking the question as to whether the witness was told to say that by a lawyer—

The Court: Well, I have had so many of these

—Tr. Tr. 13,482—

things in this trial that the idea is beginning to percolate that it happens for some reason, and I don't want it anymore. I have expressed myself on that subject again and again, and it is only a few moments ago that I sustained objections with this

last witness to questions about that woman that has just been named, and I won't have my ruling circumvented in that way. That is all there is to it.

Mr. Isserman: I did not object to the Court's question to the witness, which I thought was improper, because I wanted the Court to get the answer, but I do object to the Court's asking the question now, and the Court's comment in respect to the situation concerning which the Court has made its remarks, and I regard them as prejudicial and so charge; entirely unwarranted by anything in this record.

The Court: Very well.

Mr. McGohey: May I be heard, your Honor?

The Court: Yes, Mr. McGohey.

Mr. McGohey: I take it your Honor's observation to the witness is an instruction that such characterizations be refrained from hereafter?

The Court: It certainly is, and if he keeps doing it he may be sorry.

Mr. Isserman: I object to that remark.

—Tr. Tr. 13,483—

The Court: Very well.

Mr. Gladstein: I still don't know why everybody is so excited. What is so terrible about the expression the witness used?

The Court: I won't hear any argument from you, Mr. Gladstein, and you just try, when you desire to argue without asking my leave first. You have so persistently disregarded that direction that I cannot do otherwise than now find, as I do, that it was deliberate and contemptuous.

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—Tr. Tr. 13,484—

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Q. Were you running for office then?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Were you a candidate for president of the union at that time? A. Yes.

Mr. McGohey: Objection.
The Court: Sustained.

Q. In what month of the year 1946 were the union elections held?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Was the election in February 1946 at the time of the meeting or get-together?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Were you elected president in February 1946 of the union? A. Yes.

Mr. McGohey: Objection.
The Court: Sustained. Strike out the answer.
Mr. McGohey: Will your Honor suggest to the witness to wait a second so my objection may be heard.

The Court: I do that.

The Witness: I have tried to.

The Court: I wish you would.

—Tr. Tr. 13,485—

Q. Were you subsequently in 1947 elected a second time as president of the union—of that organization? A. Yes, sir.

Mr. McGohey: Objection.

The Court: Sustained.

Mr. McGohey: I desire to address the Court. May I do so without Mr. Gladstein's interruption. I desire to ask your Honor to direct Mr. Gladstein to refrain from testifying with this type of leading question, and your Honor has repeatedly sustained the objection.

The Court: I so direct.

Mr. Gladstein: I desire—

The Court: I don't want to hear anything from you, Mr. Gladstein. I want to tell you something: you will discontinue this mode of questioning which is suggestive of facts that I am ruling out. You have persistently done it on various prior occasions when it is quite clear that I have ruled out certain lines of testimony, and you keep adding circumstantial details in additional questions in a way which cannot fail to appear to be a deliberate attempt to get into the minds of the jury those facts even though they are not answered by the witness. You will please desist from that in the future.

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—Tr. Tr. 13,508—

**New York, August 31, 1949**

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Q. But you say the photostat in front of you is not your membership card? A. It possibly could—

Mr. Gladstein: Is that supposed to be—

The Court: Just in time to stop him.

—Tr. Tr. 13,509—

Mr. Gladstein: Just to ask where Mr. Gordon got hold of this.

The Court: Overruled. I deny the application.

Now, Mr. Witness, continue your answer. I will have no more interruptions of the cross-examination, Mr. Gladstein. We have had too much of that in this case.

Read the part of his answer that he gave before.

(Question and answer read as follows:

"Q. But you say the photostat in front of you is not your membership card? A. It possibly could—")

The Witness: (Continuing) It possibly could be but then again it could not be because the name on this card is printed in handwriting.

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—Tr. Tr. 13, 512—

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Mr. Gladstein: I would like to renew my inquiry and ask the Court to ask Mr. Gordon to state the source from which this was obtained.

The Court: I shall give no such direction.

Mr. Gladstein: The point is—

The Court: I don't want argument on it, Mr. Gladstein.

Mr. Gladstein: There may be a question of illegal obtainment of the document and I raise that question. I should think the Court should be interested in it.

The Court: You know how to raise it.

Mr. Gladstein: The way to do it is to object and I do, and ask your Honor not to permit further inquiry until the prosecution has established how and where and from whom it came by this exhibit that is being shown the witness.

The Court: I deny your application.

Mr. McGohey: Will your Honor please admonish Mr. Gladstein again not to be interrupting the examination like this, which he knows is not proper.

The Court: Well, I hesitate to give those instructions. I have given them so often here.

—Tr. Tr. 13,512a—

Mr. Gladstein: Again I renew—

The Court: I am not going to give such a direction now, Mr. Gladstein, except to say I don't want to hear any argument.

Mr. Gladstein: May I reply to Mr. McGohey's remark?

The Court: No, you may not.

—Tr. Tr. 13,513—

*By Mr. Gordon:*

Q. Now, Mr. Coleman, I show you Exhibit 206-A for identification. Will you look at that and look at the num-

ber up in the righthand corner and compare that with the number on 206 for identification; and tell me whether that refreshes your recollection as to whether or not you or someone for you filled out a registration when you got your 1947 membership card which you possibly got.

Mr. Crockett: If the Court please, I object to the question and request that the Government be compelled to show what has happened to the original before any use is made of the photostat.

The Court: The objection is overruled. The motion is denied.

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—Tr. Tr. 13,518—

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Q. Now there is a signature on the card? A. That is true, there is.

Q. Now does it look like the signature of anybody that you know?

Mr. Gladstein: I object to that—

The Court: Overruled.

Mr. Gladstein: —because it is a photostat.

The Court: Overruled.

Q. Well, now, I suppose— A. That question has been answered before. There is a signature on the card.

Q. Mr. Coleman, the question is, does it look like the signature of anybody that you know.

—Tr. Tr. 13,519—

Mr. Gladstein: I object to that.

The Court: Overruled.

A. I think I have answered that question before also, that—

The Court: You will answer it again. Now what is the answer?

The Witness: Yes, I know him.

The Court: It does look like the signature of somebody you know?

Mr. Gladstein: Just a moment. I object to your Honor's tone and manner and the questions, and particularly since we have had the experience in this case of mimeographs used—I mean stencils, stamps, used for signatures when there wasn't really the signature. Your Honor can remember—

The Court: You are deliberately contemptuous again, Mr. Gladstein.

Mr. Gladstein: Well, I assign your Honor's questions and the manner in which they were directed and the fact of the questions as misconduct.

The Court: Go ahead, Mr. Gordon. There is nothing about my tone or my manner that justifies any such characterization.

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—Tr. Tr. 13,527—

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*Recross Examination by Mr. Gordon:*

Q. The claim of the nervous disorder was one you made when you went to the port of embarkation to go overseas? A. I don't recall.

Q. Do you remember being examined at the time you were about to go overseas? A. I think there was complaints of nervousness before that.

*Winter—Direct*
*Colloquy*

Q. You did not mention it at the time you were examined for induction? A. No, I don't think I did.

Mr. Gordon: Thank you.

Mr. Gladstein: No questions about Mr. Nicodemus?

The Court: Now, Mr. Gladstein, you simply must not do that.

Mr. Gladstein: That is all.

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—Tr. Tr. 13,529—

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Q. Now will you tell us why you took the name Carl Winter?

Mr. McGohey: Objection.

The Court: What was the date after which you used the name Carl Winter for all purposes, Mr. Winter?

The Witness: I am just trying to get the exact date—the end of 1931. I might say there was one exception to that and that was when my birth certificate was required.

Q. Now I think I had asked the question why did you adopt the name Carl Winter.

Mr. McGohey: That was objected to—that question.

The Court: Sustained.

Mr. Crockett: May I be heard on that, if the Court please?

The Court: No.

Q. Mr. Winter, were either of your parents in the Com-
—Tr. Tr. 13,530—
munist or Socialist movement in this country?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Were either of your parents a member of the Communist Party?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Was your mother a member of the Communist Party?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Was your mother one of the charter members of the Communist Party in 1919?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Was your father a member of the Socialist Party of the United States?

Mr. McGohey: Objection.
The Court: Sustained.
Mr. McGohey: Your Honor, may I address the Court?

The Court: Yes, Mr. McGohey.

Mr. McGohey: I ask your Honor to suggest to Mr. Crockett where this line of questioning has been repeatedly excluded that he ought not by a series of questions leading in nature get before the jury the evidence which the Court has excluded and indicated ought not to be presented to the jury.

—Tr. Tr. 13,531—

Mr. Crockett: May I be heard, since Mr. McGohey is imputing improper motives to me?

The Court: Mr. Crockett, you have doubtless heard me on various occasions here advise counsel not to continue a series of more and more circumstantial questions when I have excluded a certain subject, as the inevitable consequence of such procedure is to suggest to the jury the truth of the facts stated in the questions, and I direct you not to do that again.

Mr. Crockett: I had assumed, if the Court please, that the objection was one of form.

The Court: I don't want any argument.

Mr. Crockett: I am not arguing. I am trying to explain.

The Court: That sounds like argument, and I do not desire it.

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—Tr. Tr. 13,577—

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Q. "4. State organizations may publish special discussion bulletins if they so desire."

*Winter—Direct*
*Colloquy*

Was there a special discussion bulletin published by the state organization in Michigan? A. No, there was not.

Q. Was there any reason why there was not?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Were you financially able to put out a statement?

Mr. McGohey: Objection.

The Court: Now, Mr. Crockett, you know to ask that kind of series of questions is like telling the jury what the answer is when I am ruling it out. This time it does not make any particular difference but please don't do that any more.

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—Tr. Tr. 13,700—

**New York, September 8, 1949**

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The Court: Very well, Mr. Sacher, I understand you have an application.

Mr. Sacher: I have, your Honor. This is an application for several types of relief. It is an application in the first place for the declaration of a mistrial on the ground that the violence and force manifested at Peekskill, New York, on Sunday of this week against hundreds upon hundreds of people who had peaceably assembled to attend a concert was a manifestation of the bias and prejudice engendered by the Government agencies, both Federal, State and

local, against the Communist Party and its members and against these defendants in particular.

It is a motion further for the Court to direct the United States Attorney to proceed forthwith to an investigation and prosecution, if such investigation

—Tr. Tr. 13,701—

should reveal what we contend it would reveal, namely, the gross violation of rights federally protected for citizens of the United States under the provisions of Section 241 of the Federal Judicial Code.

It is also an application for your Honor to inquire into all of the surrounding circumstances in connection with the occurrence of those events inasmuch as they constitute a manifestation of the most lawless conspiracy on the part of the government agents and agencies, in the violation of the constitutional rights of the persons assembled at Peekskill and therefore come within the Federal jurisdiction.

In this connection the application is predicated upon the fact that this was an organization of force and violence by agencies of government in subversion of the constitutional guarantees which are extended to all persons within our country and within the Southern District of New York where these acts were perpetrated.

In support of this application I have here the affidavits of a number of people, among them an affidavit by the defendant, Benjamin J. Davis.

The Court: You need not describe the affidavits. I will look at them when you hand them up.

*Colloquy*

Mr. Sacher: Does your Honor permit me to argue the contents of the affidavits?

—Tr. Tr. 13,702—

The Court: Let me look at the affidavits first.

(Papers handed to the Court.)

The Court: I think I will take a recess for a few moments until I can consider these affidavits. Are there other affidavits or are these all counsel has to submit?

Mr. Sacher: Except we offer in the affidavits to produce witnesses who will give oral testimony. These are all we have been able to get in the short period but there are available many persons who were assaulted and attacked.

The Court: I am concerned with what is submitted but I understand these papers I have are all the written proofs submitted?

Mr. Sacher: That is correct.

The Court: I will take a recess for a few minutes until I can read these over.

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—Tr. Tr. 13,711—

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The Court: I must say I am a little bit inclined to think that as a mere matter of jurisdiction in the fundamental sense, not jurisdiction in the sense that is so commonly used improperly, but in the fundamental sense it may well be that I, as the Judge of this court, have the power, but it is very clear to me that that should be exercised, if it is exercised at all, by some Judge holding the regular term of

court at which such motions should be made returnable, and I do not want to take the position that I have no jurisdiction in this fundamental sense because it may be that I have, but I am quite clear that even if I had it that it would not be proper for me to exercise it here. What I shall do is to deny the first part of the application on the merits.

The second part of the application I deny without prejudice to its renewal at a motion term of the court.

Defendant Dennis: May I be heard on this?

—Tr. Tr. 13,712—

The Court: Yes; I will hear you, Mr. Dennis.

Defendant Dennis: I would first like to address myself to the merits.

The Court: I don't want to hear any argument on the merits, Mr. Dennis. I have studied these papers carefully and I do not want to hear any argument on that.

Defendant Dennis: But it seems to me, your Honor, that the fascist force and violence that took place and was instigated—.

The Court: Now you know, Mr. Dennis, some time ago in this trial you and I have had quite a number of little passages. At one time I had to leave the bench because you were so disobedient of my directions, and then there was that time when I was compelled to sentence some of the defendants here for contempt, and I told you then I would treat you as one of the lawyers, and I have.

Now I direct you not to argue on the merits of this case. If you choose to disobey me I am going to

do just what I have done all through this trial. I am not going to shout or bang any gavel or use any other means. If you persist I may merely have to leave the bench, but I hope you will obey on this occasion.

Defendant Dennis: Well, in view of that, and in

—Tr. Tr. 13,712-A—

view of the remarks of your Honor which are highly prejudicial to all of the clients and all of the defendants and to myself in this statement, that if I speak on this highly important thing your Honor would leave the bench, then may I be heard on the second motion?

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—Tr. Tr. 13,717—

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Mr. Crockett: * * *

Now this morning we have filed a formal motion supported by affidavits, sworn affidavits, calling to the attention of this Court the violation of a Federal statute here within the jurisdiction of this Court. I submit, therefore, that what is taking place is a desire to put the formal requirements ahead of the more fundamental requirements; and as a member of a minority group I have actually seen lynchings take place and I know that all too frequently we take these formal subjects and—

The Court: That is enough, Mr. Crockett. No more argument, if you please.

Mr. Crockett: May I complete my argument?

The Court: No, I do not want to hear any more

argument. The minute I hear you go off on that favorite subject, I decided no more argument.

Mr. Crockett: I see a direct relation, your Honor—

The Court: No, there is no relation whatsoever.

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—Tr. Tr. 13,893—

**New York, September 9, 1949**

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Mr. McGohey: Objection.

The Court: What is that?

Mr. Crockett: I wanted to know what is the Black Legion.

The Court: I guess Mr. McGohey was right in his objection. I will sustain the objection now and direct no further answer be made. I am not going to have this continual wandering off into these other fields because if a question is asked the witness may go off into any sort of explanation. I don't consider this apposite to what is called for and I don't want any further argument.

Mr. Crockett: May I point out—

The Court: I don't want further argument.

Mr. Crockett: I wanted to say—

The Court: I think you are in contempt now. Don't do it. I will not have any more. The time for that is over.

—Tr. Tr. 13,894—

Mr. Sacher: I wish to object to your Honor's characterization of Mr. Crockett's conduct as contempt.

The Court: You may object. You have done enough of it yourself.

Mr. Sacher: I wish to object to that characterization. I think the record will prove, I think, your Honor has sought to prejudice this jury sufficiently against counsel.

The Court: You are deliberately contemptuous again.

Mr. Sacher: I am not. I wish to defend the rights of my clients and the right to advocate their cause and I resent the constant obstruction of that effort on the part of the Court.

The Court: There has been no obstruction of effort, but I will have order by the attorneys here, and I will enforce it with every power at my disposal.

Mr. Crockett: May I ask if the Court is suggesting there has been any disorder by the attorneys?

The Court: You insisted upon continuing arguing only a moment ago and I told you to stop.

Mr. Crockett: I was not arguing.

The Court: That is what you now say but every time you said it you kept it up. Let us stop now and go on with the questions.

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—Tr. Tr. 13,956—

**New York, September 12, 1949**

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Q. Did you in any radio broadcast in Detroit, Michigan, state your views as to how the ultimate objective of Socialism was to be achieved by the Communist Party of the U. S.?

*Winter—Direct*
*Colloquy*

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you in a radio broadcast in Detroit in September of 1946 state that Socialism is not the result of a minority seizure of power?

Mr. McGohey: Objection.
The Court: Sustained.
Mr. McGohey: Now, if the Court please, I should like to be heard.
The Court: I will hear you, Mr. McGohey.
Mr. McGohey: It was sought by the witness Berry to introduce this speech. The Court sustained all the objections to it. The speech was excluded. Now Mr. Crockett says he desires to lay a foundation for the introduction of the speech now, and he asked a

—Tr. Tr. 13,957—

series of questions to which objection was sustained.
Now it is apparent that we are getting into a line of questions, containing in the questions themselves the text of the speech or various parts of the speech. Now, that is a practice which the Court has frowned upon heretofore and I suggest that it ought not to be indulged in now. Either the speech is admissible or it isn't. If it isn't admissible, it is certainly not admissible piecemeal by asking a series of leading questions.
The Court: That is right, and I have had occasion to tell counsel not to do that.
Mr. Crockett: May I be heard?
The Court: But I have complete confidence that

when I instruct this jury that matters excluded are to be given absolutely no consideration whatever and that they are only to follow the proof as given, I am confident that they will follow my instructions to the letter, and I have tried to avoid giving admonitions any more than strictly necessary, and I do think, Mr. Crockett, that perhaps you do not need to go over so many of these details; I think it is better not to. I will not give you a direct admonition here with reference to it. You may follow your own wishes.

Mr. Crockett: I wonder if I may be heard with

—Tr. Tr. 13,958—

reference to Mr. McGohey's objection.

The Court: Well, Mr. Crockett, I think it is far better if you let the matter rest. We have had so many instances where it has seemed to me that when something was excluded there was a series of questions that obviously were taken right from the paper, and the purpose of it seemed very plain to me, and I had occasion to tell some of the lawyers for the defense not to do it. Now, instead of taking a hint now, which I tried in all delicacy to give you, without doing more than that, you want to argue about it. Now, don't you really think it is wiser if you drop that radio speech, and perhaps offer it again? If you do, I am going to exclude it and then pass on to something else. It is the wiser course to pursue, but if you desire to argue the matter I will let you do it.

Mr. Crockett: I shall follow the Court's sugges-

tion and drop any further questions concerning the radio speech, but I should like to note on the record my objection to the frequency with which Mr. McGohey is permitted not only to interrupt my examination, but is permitted by the Court to make statements derogatory of my conduct as an attorney, and I upon requesting an opportunity to be heard am denied that right.

The Court: I didn't deny it; I did just the opposite, Mr. Crockett. I said I would hear you. I think

—Tr. Tr. 13,958-A—

that is a very curious way to express yourself after I have just told you I would hear you, but go ahead.

Mr. Crockett: Your Honor, there have been frequent instances.

The Court: I am not going to get all excited about this. It is a very trivial phase of the case, and I think now, as it is exactly half past eleven, we will take our usual ten-minute recess.

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—Tr. Tr. 13,981—

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Q. Do you recall the name of the arresting officer?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Were you shown a warrant for your arrest?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you inquire of the officer if he had a warrant for your arrest?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did the officer tell you he had no warrant?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Where were you taken after you were arrested?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did the officers make any search of your automobile, Mr. Winter?

Mr. McGohey: Objection.
The Court: Isn't this the matter we had up before, Mr. Crockett?
Mr. Crockett: This is precisely what I am leading up to.

—Tr. Tr. 13,982—

The Court: Well, it seems to me that there is nothing in the case to warrant pursuing the subject.
Mr. Crockett: Well, then, if the Court please, I think the record in this case indicates that certain documents were taken from Mr. Winter's possession at the time of his arrest and that they are now in the possession of the United States Attorney.

The Court: Don't you know you made a motion and I denied the motion? Nothing has come up in this case, nothing has been offered that has any bearing on this, so far as I am aware, and I would suppose that if you desire to pursue the subject I shall dismiss the jury for the moment, but I am quite clear in my own mind that there is no basis for pursuing the inquiry.

Mr. Crockett: Well, I request, or rather, I move the Court to direct the United States Attorney to produce forthwith the documents taken from the possession of my client since I propose to use them in connection with further examination of my client.

The Court: What do you say, Mr. McGohey?

Mr. McGohey: If the Court please, that motion was made, briefed and decided by the Court and denied.

The Court: Do you oppose it now?

Mr. McGohey: I oppose it now.

The Court: The motion is denied. We have been

—Tr. Tr. 13,983—

all over that, Mr. Crockett.

Q. Mr. Winter, do you recall approximately how many documents were taken from your car at the time of your arrest?

Mr. McGohey: Objection.

The Court: Sustained.

The Witness: May I correct a statement of fact on the question, your Honor?

Mr. McGohey: Objection.

The Court: No, no. I sustained the objection, Mr. Winter.

Mr. Crockett: May I ask for a brief adjournment while I can examine those documents again, your Honor, to select those portions I would like to question my witness about?

Mr. McGohey: I object to that, your Honor.

The Court: Objection sustained. I shall not permit it.

Q. Mr. Winter, can you tell us the names of any of the documents that were taken from you, or taken from your automobile, at the time of your arrest?

Mr. McGohey: Objection.

The Court: Sustained.

—Tr. Tr. 13,984—

Q. Now I think you testified that subsequent to the 1945 Convention you returned to Michigan and you continued a member of the Communist Party. Will you tell us what your intention was in remaining a member of the Communist Party during the period of April 1945 to July 20, 1948?

Mr. McGohey: Objection.

The Court: Sustained.

Q. What was your purpose, Mr. Winter, in remaining a member of the Communist Party during the period covered by the indictment?

Mr. McGohey: Objection.

The Court: Sustained.

*Winter—Cross*
*Colloquy*

Q. I call your attention to the early part of 1948, Mr. Winter? Did you attend any meetings of the National Committee of the Communist Party during that period? A. I did.

Q. Did any of those meetings deal with the question of the objective of the Communist Party of the United States?

Mr. McGohey: Objection.
The Court: Sustained.

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—Tr. Tr. 14,124—

**New York, September 13, 1949**

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Q. Did you vote from Bronx Park East in 1927? A. I don't remember.

The Court: I thought you just said that you lived there after February 1, 1928.

The Witness: I first said I did not remember when I lived there but I do remember that in 1928 I lived there. I don't remember whether it was after that or before that, but I remember it in connection with traveling to work.

Q. Didn't you tell us a minute ago that you lived in Bronx Park East some time after you got this job in the Board of Transportation for which you filed this applica-

—Tr. Tr. 14,125—

tion which is Government's Exhibit 213? A. That is a

fact. I may also have lived there before then, but I don't remember.

Q. Do you want to change your testimony now? You might have lived there?

Mr. Crockett: Objection.

The Court: Overruled.

A. I said I don't remember when I lived there.

The Court: There is nothing to laugh about, Mr. Crockett.

Mr. Crockett: It is amusing considering the date of the exhibit.

The Court: It may be to you but it is not to me.

Mr. Crockett: May I call your attention to the date of the exhibit, February 1928.

The Court: You may not make suggestions during the cross-examination as you have done so frequently before.

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—Tr. Tr. 14,221—

**New York, September 14, 1949**

The Court: It seems to me, Mr. McGohey, that the only portion of this certificate that has relevancy in here is the address, and I notice some things on here that I would not consider have any bearing on the case at all.

Do you desire to examine the certificate to see if you may limit your offer somewhat?

Mr. McGohey: Without looking at it, your Honor, I am very glad to limit it to the name, the date and address.

The Court: As so limited, I shall overrule the objection and receive it.

The Witness: May I consult counsel, your Honor?

The Court: Yes. Mr. Crockett, your client desires to confer with you for a moment off the record and I shall permit it.

(Mr. Crockett conferred with the witness at the witness stand, off the record, and out of the hearing of the jury.)

(Mr. Crockett returned to the counsel table.)

Mr. McGohey: If the Court please, I don't know whether I made it clear that the name that I was referring to is the defendant's name.

The Court: Yes.

—Tr. Tr. 14,222—

The Witness: I am not sure, your Honor, whether Mr. Crockett and I understood each other.

The Court: Well, you may come back, Mr. Crockett.

(Mr. Crockett conferred with the witness at the witness off the record and out of the hearing of the jury.)

The Court: Maybe you wanted him to state some further objection and he will do it if you tell him.

(Mr. Crockett returned to the counsel table.)

*Winter—Cross*
*Colloquy*

The Court: Do you desire to add to your objections, Mr. Crockett?

Mr. Crockett: No, I do not.

The Court: Very well.

I shall receive the name and the address, and so that there may be no misunderstanding about them I shall read into the record, rather than permitting the exhibit to be handed around to the jury, the following:

"Father of the child, full name, Carl Winter. Color or race, Caucasian. Age at time of this birth, 35. Length of residence in California, zero years, three months, zero days. Birth place, Pennsylvania. Usual occupation, lecturer. Industry or business: self."

Mr. Sacher: May I call your Honor's attention

—Tr. Tr. 14,222-A—

to the fact that you indicated there were just three items, and that Mr. McGohey limited it to three items? You have read about six now.

The Witness: May I say, your Honor—

Mr. Sacher: Just the name and address, as I recall it.

The Witness: May I address the Court?

Mr. Sacher: Name, address, and date.

—Tr. Tr. 14,223—

Mr. Crockett: If the Court please—

The Court: Is this additional part that I read very objectionable to you?

Mr. Crockett: If the Court please, in view of your Honor's seemingly unintentional reading more than—

*Winter—Cross*
*Colloquy*

The Court: Mr. Crockett, that is one of the most contemptuous things that has occurred at this trial.

Mr. Crockett: I am trying—

The Court: And for that you will be brought to justice.

Mr. Crockett: I am trying to say, with the Court's permission—

The Court: You just bear that in mind, Mr. Crockett.

Mr. Crockett: Your Honor, may I—

The Court: You say I seemingly do something and accuse me of deliberately evil motives here. That is something that I cannot pass over and I shall not. I now adjudge you in contempt for that.

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—Tr. Tr. 14,240—

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Q. Now I show you what purports to be the Los Angeles Extended Area Telephone Directory of March 1943, issued by the Southern California Telephone Company and I direct your attention to page 202—

Mr. Sacher: Just a moment. I object to that question.

—Tr. Tr. 14,241—

The Court: Overruled.

Mr. Sacher: I would like to be heard if I may.

The Court: I don't desire to hear you, Mr. Sacher.

Mr. Sacher: Will there come a day, your Honor, when you will hear us?

The Court: Mr. Sacher, I consider that imper-

tinent, but you have been so persistently contemptuous throughout this trial that I suppose nothing I could say could make you desist.

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—Tr. Tr. 14,326—

**New York, September 15, 1949**

* * * * *

Q. Do you or don't you agree with Mr. Gates' testimony that from January 1946 to July 1948 Political Affairs was the theoretical organ of the Communist Party?

Mr. Crockett: Again I wish to object to shouting by the United States Attorney.

The Court: There has been no shouting. It is perfectly absurd.

Mr. McGohey: I deny that there was shouting.

The Court: You and your colleagues have sought at every junction to misinterpret and to put false statements on the record about what I have done and Mr. McGohey has done and you must stop it. There has been no shouting by Mr. McGohey whatsoever. Please stop this sort of thing and let us go on with the trial.

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—Tr. Tr. 14,653—

**New York, September 20, 1949**

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Mr. Crockett: May it please the Court, I call Mr. Paul Robeson to the stand.

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PAUL ROBESON, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

* * * * * *

—Tr. Tr. 14,656—

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Mr. McGohey: Objection.

The Court: Sustained.

Is Mr. Robeson called as a character witness, Mr. Crockett?

Mr. Crockett: He is not called as a character witness as I understand the term "character witness."

The Court: Then I will sustain the objection.

* * * * * *

—Tr. Tr. 14,661—

* * * * * *

Q. Have you ever heard Mr. Williamson speak as a representative of the Communist Party of the United States?

Mr. McGohey: Objection.

The Court: Sustained.

Q. How long have you known Mr. Dennis? A. I have known Mr. Dennis for some years.

Q. Have you ever visited with Mr. Dennis? A. Yes—

Mr. McGohey: Objection.
The Court: Sustained. Strike out the answer.

Q. Have you ever shared the platform with Mr. Dennis at any public gathering?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Have you ever shared the platform with any of the other defendants at any public gathering?

Mr. McGohey: Objection.
The Court: Sustained.

Q. I think you shared the platform with Mrs. Roosevelt, have you not?

Mr. McGohey: Objection.
The Court: Sustained.

Mr. Crockett, I am beginning to get the impression that these questions, which you must know come within my ruling of exclusion, are being asked for the purpose of getting a claim as to the facts before

—Tr. Tr. 14,662—

the jury in a way that I have noticed was done by other lawyers here in this case, and I have indicated my displeasure at such things and I hope you will try to bear that in mind.

Mr. Crockett: My understanding—

The Court: A series of questions such as you have been asking are bound to convey the impression that the facts stated in the questions are true, despite the fact that I ruled them out and despite the fact that it is obvious from my rulings that if asked and objected to I would sustain the objections and rule them out. I don't think that is what a lawyer should do.

Mr. Crockett: My understanding of your Honor's ruling is that I must fix the time, the place and the circumstances so that I can go into what was discussed.

The Court: No. I think you must know perfectly well that a question as to whether this witness was on the platform with the wife of former President Roosevelt has absolutely nothing to do with this case, and I don't think it is proper for you to continue a series of questions like that.

Mr. Crockett: I submit that it may have something to do with—

The Court: I am not going to try to do anything more to stop you from continuing that if you insist upon doing it, but I hope you will feel after what I have said that it is better for you not to continue that type of question.

—Tr. Tr. 14,663—

Q. Mr. Robeson, during the time that you have known Mr. Dennis have you ever heard Mr. Dennis teach or advocate the overthrow of the Government of the United States by force and violence?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Mr. Robeson, have you at any time heard any of the defendants teach and advocate the duty or the necessity of overthrowing the Government of the United States by force and violence?

Mr. McGohey: Objection.
The Court: Sustained.
Mr. Crockett: In view of the Court's ruling I am convinced that it will be impossible to bring before the Court the testimony that I had hoped to bring before the Court through this witness.
The Court: I don't think you should have called him.

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—Tr. Tr. 14,756—

**New York, September 21, 1949**

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Q. Did you make a speech on the subject "Is violence the answer to the violence of the lynchers"?

—Tr. Tr. 14,757—

Mr. McGohey: Objection.
The Court: Sustained.
Mr. Sacher: Well, I would like to be heard on that, your Honor, if I may.
The Court: Mr. Sacher, I have heard you on that so often on this trial that I think it is quite unnecessary to hear any further argument on it. The greater

part of the first few months of the trial were spent in receiving proof about Jim Crow, lynching, Spain, China—various other peripheral issues—

Mr. Sacher: I am talking about violence now.

The Court: —but I finally had received so much evidence on that I was required to make the series of rulings that I made a couple of months ago. Now I should think that you could accommodate yourself to those rulings without insisting on keeping at it, but if you desire to, you may. That is your privilege as counsel, but I am merely saying now what I ruled before. It is not that I held those things were not relevant, but so many hundreds, if not thousands of pages of this record have been taken up on those peripheral issues. The question is not here whether it is right to lynch Negroes or anyone else, or whether the Jim Crow system is right or wrong. The question here is whether these defendants are individually guilty of the charge, and so,

—Tr. Tr. 14,758—

having received such a tremendous lot of evidence on that thing, intending, and indeed ruling with the utmost liberality, I have got now to stick to what I said a month or so ago, that I will receive no more.

Mr. Sacher: But, your Honor, this is a question—

The Court: I do not want any argument.

Mr. Sacher: It is not a question of argument: I think your Honor ought to know what we want to prove.

The Court: Please desist. I think I do know what you desire to prove. I have looked over these pamphlets here and I desire no argument about them.

*Winston—Cross*
*Colloquy*

Mr. Sacher: But these pamphlets have no relation to what I am asking him about. This is an altogether different, unrelated subject to these pamphlets, and I say to your Honor, Mr. Winston will prove—

The Court: Is there no way of forcing you to stop?

* * * * *

—Tr. Tr. 14,913—

**New York, September 22, 1949**

Q. Did you talk to any of your co-defendants? A. Co-defendants?

Q. Any of the other ten defendants on trial.

Mr. Sacher: I object to that. Mr. Winston knows what co-defendants means. I object to the question.

The Court: Mr. Sacher, you are assuming your old offensive role and I wish you would drop that manner. It is not helpful here.

Mr. Sacher: Well, I object to his manner toward Mr. Winston.

The Court: You have left the distinct impression only a few moments ago both with me and doubtless with the jury that Mr. Winston was not even in the United States when that convention was had, and hence couldn't have voted for it.

Mr. Sacher: I object to your Honor's statement. I asked Mr. Winston a question.

The Court: Please don't start shouting again.

Mr. Sacher: I am not shouting, your Honor. I am replying that when I asked a question I didn't

intend to create any impression. I inquired of Mr. Winston concerning facts, and my objection is as to Mr. Gordon's manner toward Mr. Winston, and I object to it.

The Court: I find nothing in Mr. Gordon's manner to justify any comment by you. Your objection —Tr. Tr. 14,914— is overruled.

A. I am quite sure I did. I am trying to recall now whether —I am quite certain. I can't remember who.

*By the Court:*

Q. You were not only in the country here but you were talking to some of these co-defendants here during that period of the furlough? A. My friends.

The Court: Well, that is all right.

*By Mr. Gordon:*

Q. But you can't remember who? A. No, I don't. If you give me a second I probably will.

Q. Well, they are right there. See if any of them look familiar.

Mr. Sacher: I object to this remark of Mr. Gordon. The witness requested an opportunity to think.

The Court: Well, Mr. Sacher, are you just trying to create a rumpus again?

Mr. Sacher: I suggest, your Honor, that the rum-

pus is being conducted or carried on by Mr. Gordon. I am not creating a rumpus.

The Court: I find nothing to justify any of these statements here. Now I think you had better subside. Now what is the question?

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—Tr. Tr. 14,927—

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Q. Well, was your permanent residence in New York at 118 West 112th Street? A. Well, during those days I moved so many places. At that time, it was.

Q. At what time was it? A. At the time that I signed this registration blank.

Q. Yes. And during the four years it wasn't? A. What is that?

Q. During the four years it wasn't, of course? A. No.

Q. Mail addressed to you at that address would have been lost?

Mr. Sacher: I object to this question on the ground—

The Court: Overruled.

Mr. Sacher: (Continuing) On the ground that the registration says two months—

The Court: I don't want any argument about it, Mr. Sacher.

Mr. Gladstein: If your Honor please, are you going to permit the prosecution to misstate the contents of the exhibit in the course of framing these questions?

*Winston—Cross*
*Colloquy*

—Tr. Tr. 14,928—

The Court: Mr. Gladstein, I think there is no call for making any such remark as that—

Mr. Gladstein: I think the record will substantiate it.

The Court: —and I have found in this trial that as soon as the cross-examination starts, the disrupting tactics of counsel begin, and I think you had better let the cross-examination proceed without undue interruption.

Mr. Gladstein: Your Honor, may I ask if you will instruct the jury that this line of inquiry should be considered by them in the light of the fact that people do go from their permanent residence to other places without losing their residence. I have been in New York for nearly a year on this case but I don't regard myself as having—

The Court: Mr. Gladstein—

Mr. Gladstein: —as having left—

The Court: Mr. Gladstein, you have no right to make such comments. If proper at all, they come in the summation, and I have had so much of that here that I have had to admonish counsel repeatedly. Now please do not interfere any more with the cross-examination.

*Winston—Cross*
*Colloquy*

—Tr. Tr. 14,980—

**New York, September 23, 1949**

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Q. (Continuing) Now he said that you taught at that school, and you told us yesterday afternoon that your recollection was that you taught at only one Young Communist League School at Camp Beacon in the fall of 1938; is that right? A. That is correct.

Q. Now Mr. Manewitz was asked—

Mr. Sacher: What page is that, Mr. Gordon?

Mr. Gordon: Well—

Mr. Sacher: You are looking at a page; may I not have it?

—Tr. Tr. 14,981—

Mr. Gordon: Your Honor, Mr. Sacher asked a question, and before I could even answer it he interrupts. If he wants to know the page, I am about to tell him, and if he will listen I will tell him.

The Court: You may do so.

Mr. Gordon: It is page 11,583.

Q. Mr. Manewitz was asked, "Who was the director of the school?", and he said, "I would prefer not to mention." He was asked: "Do you know?", and he said, "Yes, sir, I do."

"Q. You do know who it was? A. Yes, sir I do know."

know."

Mr. Sacher: Just a moment. I am obliged to interrupt, your Honor. If I may, I should like an opportunity to state the ground.

The Court: I will hear you.

Mr. Sacher: The ground on which I object is that the matter which Mr. Gordon is referring to was brought out on cross, on a collateral matter. I respectfully submit that whatever is found there he is bound by and may not now use to cross-examine the witness, particularly—

The Court: Let me see if I understand. You say if on cross-examination Government counsel asks one of your witnesses a question and the witness declines to answer, that then the Government counsel may not inquire of anyone on that subject?

—Tr. Tr. 14,982—

Mr. Sacher: That is not the point.

The Court: If that is so, that is a curious way of obstructing justice.

Mr. Sacher: I haven't said that, so there is no use pulling in obstruction of justice.

The Court: Well, what do you say?

Mr. Sacher: What I do say is that the record shows that Mr. Manewitz stated that he knew who the director was but that he preferred not to state who it was. He was asked—and therefore there is nothing here to be elicited which can contradict or bear upon any of the testimony by Mr. Manewitz. There is nothing that will be elicited from this witness that can contradict that testimony.

Mr. Gordon: Your Honor, may I be heard?

The Court: I don't think I need to hear you, Mr.

Gordon. The objection was made as you were reading, and it seemed very properly from Mr. Manewitz's testimony in the transcript, as I recall—you have not yet asked your question.

Mr. Gordon: That is correct.

The Court: So that if you desire you may read that part again and put your question, and then if the question is objected to I shall rule.

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—Tr. Tr. 15,039—

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Mr. Sacher: I have just one other application to make now, your Honor, and that is this: That in view of the fact that we are about to rest our case I should like to apply now for the release and the discharge of the four men who are now confined. I think—

The Court: I don't think that is an appropriate subject to be discussed in the presence of the jury.

Mr. Sacher: Will your Honor entertain an application then, after the jury is—

The Court: I have ruled already and I still rule that those who have committed offenses against the United States and have been sentenced therefor must serve those sentences, and I shall not make any changes as to that.

Mr. Sacher: May we have permission to make an application to your Honor after the jury is dismissed?

The Court: You have made the application and I have just denied it.

Mr. Sacher: The defense now—

*Colloquy*

The Court: As I say, I don't think that that was an appropriate subject to bring up in the presence of the jury, but you have done it and so the matter will have to rest there.

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—Tr. Tr. 15,168—

**New York, September 28, 1949**

The Court: Three fundamental conditions before socialism can come in?

Mr. Gladstein: Yes. One of them your Honor will recall is that there must exist within the country an internal situation, an economic situation of such a character that the people, the majority of the people will not, because they cannot, continue under those circumstances without seeking some peaceful and lawful change.

The Court: I wish you would explain that a little bit, internal situation of an economic character such that the majority of the people cannot continue without some peaceful and lawful change.

Mr. Gladstein: Your Honor will find in the documents the expressions of these men that socialism in this country can and only will come when, as and if the majority of the people decide that is what they want, they will so decide only if, as and when the conditions are such, that that is the choice which they seek to make, and the purpose of the Communist Party is simply to spread and communicate its views through these documents.

The Court: Well, let us get the other two.

Mr. Gladstein: Well, I have expressed the other

two in what I have said, your Honor. I do not want to spend too much on this portion because I want

—Tr. Tr. 15,169—

to go off on another portion of the evidence.

The Court: You would like me to understand it.

Mr. Gladstein: I do.

The Court: Well, I don't.

Mr. Gladstein: Your Honor, I commend then the Theory and Practice of the Communist Party; I also commend to your Honor that portion of the literature that has been offered by the defense here—.

The Court: You know, you are in effect telling me, "Judge, I could tell you in a word or two but I won't do that. You read these long papers and you will find out what I am trying to tell you.

You really ought not to do it, but go ahead.

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—Tr. Tr. 15,208—

**New York, September 29, 1949**

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Mr. Sacher: * * *

That was true of Christianity; it was true of the Renaissance; it was true of the Reformation; it was true of every social and political movement which sought to advance human thought and welfare; and in each of these societies your Honor will find, and I think it is justifiable on these motions to refer to these matters, that they are matters that to any informed person are matters of historical fact and as such we may ask your Honor to properly and logically take account of. The early Christians used

false names. They met in secret. They taught in secret. They did so many things, more than this evidence disclosed, that if Mr. McGohey were a contemporary of Jesus he would have had Jesus in the dock.

Mr. McGohey: Your Honor, I resent that.

The Court: I don't blame you.

Mr. McGohey: That is the most unconscionable thing I have ever heard, your Honor. I have been born and raised in this city. It is well known that

—Tr. Tr. 15,209—

I am a member of the Catholic Church. I firmly, with all my heart, believe that Jesus Christ is Divine, that he is the Son of God, and to have it said in this courtroom, where I am a member of the bar, that I would have persecuted my God is an insult that I can't resist interrupting for.

The Court: Please refrain from any such reference again, Mr. Sacher. That was quite improper, and I don't blame Mr. McGohey at all for resenting it; anyone would.

Mr. Sacher: I say to your Honor—

The Court: It is a terrible thing to say.

Mr. Sacher: I say to your Honor that the resort to so-called secrecy—

The Court: You don't even apologize for it.

Mr. Sacher: I am proceeding with my argument, your Honor. I have no apologies to make.

The Court: The depths to which you can sink to—

Mr. McGohey: Your Honor, I do not desire an apology.

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# United States District Court

SOUTHERN DISTRICT OF NEW YORK

C-128-87

UNITED STATES OF AMERICA,

—against—

WILLIAM Z. FOSTER, *et al.*

## REQUESTED MEMORANDUM OUTLINING FURTHER PROOF OF DEFENDANTS' CHALLENGE

Subject to the objections heretofore made and without waiving the same and subject to the reservations hereafter made, the defendants herewith outline the proof which defendants intend to offer and the manner in which it will be presented in further support of their contention that the undemocratic method of selecting jurors in the Southern District of New York has resulted in making that jury system the organ of the rich, the propertied and the well-to-do and in the systematic and deliberate exclusion of the poor and economically depressed, including manual workers, Negroes and other minorities from fair participation in that system, as more specifically set forth in the defendants' written challenge now before the Court.

*First*: The defendants will complete the proof of the allegations contained in the challenge and of the factual matter set forth in the affidavit annexed thereto and in the exhibits incorporated therein by reference.

*Requested Memorandum Outlining Further Proof of Defendants' Challenge*

*Second*: The defendants will establish by competent testimony and other evidence in respect to the 28 panels of jurors heretofore analyzed, and using the present Congressional Districts in Manhattan as a frame of reference; that;

a. The character of the areas in each such District (from 1940 to the present time) from which jurors have been and are drawn in whole or in substantial part and the character of the areas in each such district (from 1940 to the present time) from which no jurors or few, if any, jurors, have been drawn.

b. The areas first mentioned (in paragraph numbered (a) above) are areas which have the highest rentals in the district and contain most of the modern apartments and houses occupied largely by persons in the executive and professional classifications (as heretofore used in these proceedings) and by salaried clerical and sales employees; and that few, if any, Negroes, Puerto Ricans and other minorities reside in these areas.

c. The areas last mentioned (in paragraph numbered (a) above) are areas which contain, for the most part, tenement houses and other low rental dwellings occupied substantially by manual workers. This testimony and evidence will further establish the specific portions of these tenements and low-rental areas in which Negroes, Puerto Ricans or other minorities reside and the registered voting population in said Negro and Puerto Rican areas.

*Requested Memorandum Outlining Further Proof of Defendants' Challenge*

d. Additional evidence will be introduced by sufficient sampling as to each District to bring up-to-date the description of rents in the above areas as contained in the Market Analysis and Surveys which have been received in evidence (challenge Exhibits Nos. 20 and 87).

(NOTE: It is intended by this character of proof to establish for each of the Congressional Districts in Manhattan, the same type of factual data which, in respect of the 18th Congressional District, was testified to by Congressman Marcantonio. Additional testimony on this subject for the 18th Congressional District will be limited to showing the character of the residences of the three jurors inadvertently omitted by Congressman Marcantonio.)

*Third*: Defendants will present testimony and evidence to prove:

a. That the West Bronx and Riverdale areas from which jurors in the county of the Bronx are drawn in substantial quantity (areas which include substantially all of the 25th Congressional District and the westerly half of the 23rd Congressional District) are the highest rental areas of the Bronx and are areas in which relatively few manual workers and practically no Negroes or Puerto Ricans reside.

b. That the area known as the East Bronx, consisting of the easterly and southeasterly portion of the

23rd Congressional District and the entire 24th Congressional District and from which relatively few jurors are chosen, comprise the lowest rental area in the Bronx; consists largely of tenement houses occupied mainly by manual workers; and contains large concentrations of Negroes and Puerto Ricans, which concentrations will be delineated and described together with the registered voting populations of this area.

c. That the Parkchester area in the Bronx from which 37 percent of the jurors are drawn (challenge Exhibit No. 131) is a housing development containing 40,000 people embracing approximately 12,000 families; that Negroes are excluded from that development; that approximately 16% of the tenants are manual workers; that the remaining tenants are business, professional, clerical and governmental employees; and that the rentals in said development are comparatively higher than the rentals in the remainder of the east Bronx.

*Fourth*: In respect of Westchester County, defendants will offer testimony and evidence to establish the occupational distribution of the jurors residing in that County; where they reside within that County; and the character of the areas in which they reside. This will be done for 28 jury panel lists mentioned above and representative of the period commencing January 1940, to date. Proof also will be presented to show that the Westchester areas from which jurors are selected are the areas where the rich and

well-to-do people reside and those who are in the executive and professional classifications as these terms have been defined in these proceedings, and where practically no manual workers and Negroes reside.

*Fifth*: Defendants will present testimony and evidence to establish that, by design, the majority of those persons chosen from among the executive and professional classes, were, within their economic groups, among the highest-salaried and among those receiving the largest incomes in the Southern District of New York.

*Sixth*: Testimony and evidence will be offered to establish the actual occupation of the jurors; that such actual occupation is in substantial accord with the occupation of each as shown on the above-mentioned jury panels; and that the actual occupation of said jurors is in substantial accord with the occupational classification into which he was slotted in the analysis of the jury panels in evidence in this proceeding.

*Seventh*: Testimony will be presented to establish the race of the jurors, thereby showing virtual exclusion of Negroes and Puerto Ricans.

*Eighth*: Evidence will be presented to establish the specific methods which were decided upon, and which were used, to carry out the purpose of making the jury system in the Southern District of New York an undemocratic and unrepresentative system with the inclusions and exclusions set forth in the challenge; Said evidence will

establish how and in what manner, and during which periods of time, the attaches of the court went about the tasks and plan of compiling, or having compiled for them, lists containing large numbers of names of persons who thereafter were brought into the jury system as qualified jurors, some acting as grand jurors and some as petit jurors from time to time up to the present.

*Ninth*: Evidence will be presented to establish that the attaches of this Court, under the direction and supervision of the senior judge of this Court, embarked upon and carried out a plan to carefully select and handpick both petit and grand jurors, by methods that were completely undemocratic and contrary to law, and with the calculated purpose of achieving an unrepresentative and unlawful jury system, which result was achieved according to plan.

*Tenth*: Defendants will present testimony and evidence to establish that:

a. Pursuant to deliberate decision and design, there was adopted by the officials of this Court prior to 1940 an undemocratic and unlawful procedure for the selection of jurors, both grand and petit; that under this procedure, substantial numbers of names of persons who were qualified under law to be, and who had been serving as, jurors, were discarded from the files of active jurors as undesirable; that it was decided to heavily weight the jury lists with the names of persons who were rich and economically powerful, who moved in exclusive social circles, who resided in

neighborhoods in which neither working people nor Negroes and other minorities lived; and that said decision was carried out according to plan;

b. That arrangements were made by said Court officials and certain large corporations and financial institutions to the effect that such corporations and institutions would supply executive personnel and other specially selected employees of such corporations and institutions to act as jurors; that among the corporations with whom such arrangements were made, were large banking, trust and business companies; and that it was arranged for employees of such corporations to serve as jurors without loss of salary or wages;

c. That it was decided to resort to, and there was resort to, exclusive and select compilations of names of executives, directors, professional persons and people in the Social Register who were brought into the jury system as jurors; that said compilations excluded Negroes and working people; that the address telephone book of New York City has been continuously used since about 1940 to date to carefully select jurors from geographical areas in which manual workers, Negroes and other minority groups do not reside; and that voting lists have been discriminatorily used for the same purposes and with the same result.

*Eleventh:* Evidence and testimony will be presented to prove:

*Requested Memorandum Outlining Further Proof of Defendants' Challenge*

a. That the attaches of this Court kept and maintained separate files for grand jurors as distinguished from petit jurors and that names in said files numbering approximately 2,000 are repeatedly and exclusively used in compiling grand jury panels for this Court;

b. That it was decided to, and the Court attaches did, heavily weight the files containing the names of grand jurors with the most economically powerful and propertied persons obtainable within the Southern District of New York;

c. That a very substantial number of such persons are leading directors and executives of huge corporations largely in the utility, insurance and financial fields;

d. That a close liaison and work relationship was established between the Court attaches and a private organization known as the Federal Grand Jurors Association of the Southern District of New York, through the medium of which this Court was supplied with lists containing thousands of names of persons selected by said Association and unlawfully added to the files of grand jurors and petit jurors serving in this Court;

e. That it was decided to make jurors comprising the Grand Jury panels exclusive and un-representative of the people, and by reason thereof, it was arranged

to achieve, and there was achieved a composition of grand jurors which almost totally excluded manual workers therefrom and grossly overweighted the inclusion therein of economically powerful executives, directors, professional persons and wealthy people; members of exclusive social clubs or whose names were found in exclusive social registers, and the salaried employees of large corporations.

*Twelfth*: The factual data relative to the Federal Grand Jury Association set forth in the challenge and affidavit annexed thereto will be introduced in evidence together with the following additional facts relative to the same:

a. That the said Association has supplied numerous lists to the clerk of this Court for use in the selection of Grand and Petit Jurors;

b. That said lists were specially selected from and in the main were confined to wealthy persons, persons in the executive and professional classifications as described in this proceeding, the wives of such persons the salaried employees of large banking and utility corporations and specially selected manual workers employed by such corporations;

c. That said lists were in fact used by the Clerk in establishing and maintaining the jury lists from which grand and petit jurors are drawn;

d. That the said lists were and are not representative of a true cross-section of the community but were

intended to be used and were used in achieving the inclusions and exclusions set forth in the written challenge before the Court;

e. That many of the names so supplied by the said Federal Grand Jury Association have been and are still used by the Clerk of this Court in the selection of Grand and Petit Jurors;

f. That the said Association is comprised of approximately 600 former Grand Jurors still on the Grand Jury list maintained by the Clerk and represent one of the greatest concentrations of wealth and economic power in the Nation;

g. That the officers and governing and committees boards of the said Association are largely representative of the most powerful corporations in the United States, principally in the insurance, utility and financial fields;

h. That the lists furnished to the Clerk, and as used by him, are designed and have the effect of giving said corporations undue weight and influence in the selection of Grand and Petit Jurors, resulting in the overloading of the Jury lists with officers and salaried employees of such corporations and of others in like economic status and in the virtual exclusion of manual workers, Negroes, Puerto Ricans and other minority groups, as set forth in the challenge;

i. That said Association has had an active part in assisting Grand Jurors in the exercise of their duties

*Requested Memorandum Outlining Further Proof of Defendants' Challenge*

and powers under the law and the Clerk and Jury Commissioner in carrying out their obligations in the selection of Grand and Petit Jurors;

j. That such assistance was and is rendered in part by a "Panel" Committee of the said Association, specifically created for that purpose and using its influence and the influence of said Association to overload the lists and panels drawn from the same as aforesaid and to assist in creating the exclusions set forth in the challenge.

*Requested Memorandum Outlining Further Proof of Defendants' Challenge*

## CONCLUSION

In addition to the foregoing the defendants reserve the right to present such additional, material and relevant evidence on any issues on this challenge which may arise in the course of presenting the above evidence and particularly out of the testimony of adverse and hostile witnesses, governmental or otherwise.

Dated, New York, New York, February 14, 1949

Respectfully submitted,

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